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DEPARTMENT OF VETERANS AFFAIRS  
NORTHERN CALIFORNIA HEALTHCARE SYSTEM

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

E. K. WADE,

Plaintiff,

v.

DEPARTMENT OF VETERANS  
AFFAIRS, NORTHERN CALIFORNIA  
HEALTHCARE SYSTEM,

Defendants.

No. C 05-4960 CRB

**[PROPOSED] ORDER GRANTING  
MOTION TO DISMISS FOR LACK OF  
SUBJECT MATTER JURISDICTION  
OR IN THE ALTERNATIVE FOR  
FAILURE TO STATE A CLAIM, AND  
FOR RULING WITHOUT HEARING  
UNDER CIVIL LOCAL RULE 7-1(b)**

Date: March 10, 2006

Time: 10:00 a.m.

Place: Courtroom 8, 19<sup>th</sup> Floor

Before: Honorable Charles R. Breyer

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RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FILED

FEB 15 2006

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

For good cause shown, the Court hereby grants the motion and dismisses this action  
parties for lack of subject matter jurisdiction.

An FTCA lawsuit must be preceded by a timely administrative claim with the appropriate federal agency. 28 U.S.C. § 2675(a). The claim requirement is jurisdictional and may not be waived. Burns v. United States, 764 F.2d 722, 723 (9<sup>th</sup> Cir. 1985). The statute requires complete exhaustion of administrative remedies before an action may be instituted in the district court. McNeil v. United States, 508 U.S. 106 (1993). Even when an action is prematurely instituted, a court cannot retain jurisdiction until the administrative remedies are exhausted. Jerves v. United States, 966 F.2d 517, 521 (9<sup>th</sup> Cir. 1992).

Here, plaintiff E. K. Wade did not file his administrative claim with the Federal Defendant until October 31, 2005. Under the FTCA, the government has a minimum of six months to act on Mr. Wade's claim. Therefore, Mr. Wade has not exhausted administrative remedies at this point.

The dismissal is without prejudice.

SO ORDERED.

Dated: February 15, 2006



Hon. CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that on **February 3, 2006** she caused a copy of:

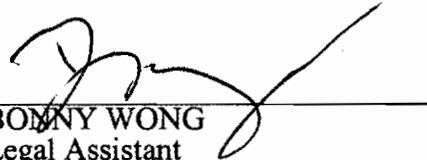
**[PROPOSED] ORDER GRANTING MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION OR IN THE ALTERNATIVE FOR FAILURE TO STATE A CLAIM, AND FOR RULING WITHOUT HEARING UNDER CIVIL LOCAL RULE 7-1(b)**

to be served by mail upon the person at the place and address(es) stated below, which is the last known address:

**E. K. Wade  
522 North Civic Drive, Apt. D  
Walnut Creek, CA 94597**

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Dated: February 3, 2006

  
\_\_\_\_\_  
**BONNY WONG**  
Legal Assistant

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

WADE,

Plaintiff,

v.

DEPARTMENT OF VETERANS AFFAIRS  
NORTHERN CALIFORNIA et al,

Defendant.

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Case Number: CV05-04960 CRB

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on February 15, 2006, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

E. K. Wade  
522 North Civic Drive, Apt. D  
Walnut Creek, CA 94597

Jonathan Unruh Lee  
United States Attorneys Office  
Northern District of California  
450 Golden Gate Avenue, 10<sup>th</sup> Floor  
P.O. Box 36055  
San Francisco, CA 94102-3495

Dated: February 15, 2006

Richard W. Wieking, Clerk  
By: Barbara Espinoza, Deputy Clerk